

Under Illinois law, persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. See 86 Ill. Adm. Code 130.1940. (This is a GIL).

October 18, 1999

Dear Xxxxx:

This letter is in response to your letter dated July 13, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is a regional environmental engineering firm specializing in water and wastewater treatment plant design. This requires that we prepare bidding documents for government agencies (counties, cities and utility districts).

The bidding documents for public bidding must accurately state whether or not government agencies are exempt from state sales and use taxes on materials and equipment incorporated in the work.

We would appreciate any information you have (a precise answer or reference to state law) with respect to this issue. If the state is not exempt from sales and use tax we assume the Contractor must pay these taxes. If government agency is exempt, we assume Contractor is not required to pay sales and use tax. Is this a correct statement in the state of Illinois.

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961). See the enclosed copy of 86 Ill. Adm. Code 130.1940.

When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. When contractors buy building materials they will incorporate into real estate from suppliers not registered to collect Illinois tax, the contractors must self-assess the Use Tax and pay it directly to this Department.

On the other hand, construction contractors act as retailers and incur Retailers' Occupation Tax liabilities when they sell items over-the-counter or they sell items that remain tangible personal property when installed.

Organizations that qualify as exclusively religious, charitable, or educational or as a governmental body can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers ("E" numbers). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. Sales to governmental bodies are subject to tax unless the governmental body has obtained an active "E" number from the Department. See 86 Ill. Adm. Code 130.2080, enclosed.

As noted above, because contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate they owe the Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.